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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,364

06/19/2006

Joseph Zawierucha

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8196

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7590

12/31/2008

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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WASHINGTON, DC 20005

EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

12/31/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,364	<b>Applicant(s)</b> ZAWIERUCHA ET AL.	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 7-12, 22-24 and 27-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 13-21, 25, 26, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/19/2006 and 7/21/2006</u> .                                 | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1-35 are pending.

### ***Election/Restrictions***

Applicant's election without traverse of herbicide B, carfentrazone and herbicide A imazapyr in the reply filed on 9/30/2008 is acknowledged. Claims 7-12, 22-24 and 27-33 are withdrawn as being directed to non-elected species.

Claims 1-6, 13-21, 25, 26, 34 and 35 are currently under examination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 25 and 26 rejected under 35 U.S.C. 102(b) as being anticipated by Hacker et al. (US 2001/0031704).

Hacker et al. disclose herbicide combination A+B where A is selected from imidazolinones, such as imazapyr and B is one or more herbicides including carfentrazone (abstract; [0126]). Preferably, the application rate of a herbicide A is 10-800 g a.s./ha and herbicide B is 1-150 g a.s./ha ([0063] and [0200]). Application can take place pre-emergence or post emergence [0271].

Claims 21, 25 and 26 rejected under 35 U.S.C. 102(b) as being anticipated by Pellerin et al. (Herbicide Mixtures in Water-Seeded Imidazolinone-Resistant Rice, 2003).

Pellerin et al. disclose a combination of Imazathapyr and Carfentrazone (Table 1, page 838).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 13-20, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hacker et al. (US 2001/0031704) in view of Bratz et al. (US 2003/0148887).

### **Applicant's Invention**

Applicant claims a method of treating coniferous plants by applying carfentrazone and a combination of imazapyr and carfentrazone. Claim 14 and 34 specify the application of carfentrazone and/or imazapyr is during site preparation (pre-emergence). Claim 15 specifies the ratio of A:B is from 1:5 to 200:1. Claim 16 specifies imazapyr is applied in amounts from 100 to 1400 g/ha. Claim 17 specifies carfentrazone is applied in amounts from 10 to 500 g/ha. Claim 18 and 35 specify application of carfentrazone and/or imazapyr is after emergence of the coniferous plants. Claims 19 and 20 limit the coniferous plants to those belonging to the Pinaceae family and species of Pinus.

**Determination of the scope and the content of the prior art**

**(MPEP 2141.01)**

The teachings of Hacker et al. are addressed in above 102(b) rejection.

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Hacker et al. do not teach treating coniferous plants. It is for this reason that Bratz et al. is joined.

Bratz et al. teach herbicidal mixtures which may comprise imazapyr and/or carfentrazone [0098]. The formulations can be employed for treating crops including Pinus species [0121]. Pinus species are a subfamily of Pinaceae which are coniferous plants.

**Finding of prima facie obviousness**

**Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hacker et al. and Bratz et al. to further include treating coniferous plants of the Pinaceae family. One would have been motivated to include treating coniferous plants because Bratz et al. teach utilizing imazapyr and carfentrazone for the treatment of Pinus.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Landes et al. (US 6,054,410).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
Patent Examiner  
Art Unit 1616

/Johann R. Richter/

Application/Control Number: 10/583,364

Page 6

Art Unit: 1616

Supervisory Patent Examiner, Art Unit 1616